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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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Dear Madam Chairman:

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In accordance with your request of November 19, 1970, we have obtained information on the basis used by the Office of Education for classifying contracts as either competitive or noncompetitive. Our findings were discussed with your office on February 5, 1971, at which time we were asked to provide you with a written summary of these findings.

We understand that your concern stems from a conflict between information provided to you by the Office of Education and that provided by the Department of Health, Education, and Welfare. The information provided by the Office of Education shows that nearly all its contracts have been awarded on the basis of competition, but the information provided by the Department shows that only a few Office of Education contracts have been awarded on this basis. The differences in classification have resulted primarily because the Office of Education uses a "brochure" system in its procurement process and classifies all contracts awarded under this system as competitive, whereas the Department classifies such contracts as noncompetitive.

The Office of Education's procurement process under the brochure system, the reasons for using the system, and its effect on the classification of contracts are explained in the following paragraphs. Enclosed for your information are examples of brochures used by the Office of Education (encs. 1 and 2) and the Office of Education's official response to the questions raised in your request of November 19, 1970 (enc. 3).

Under the brochure system, the Office of Education prepares documents (brochures) describing educational program areas in general terms, which it sends to educational institutions, to profit and nonprofit organizations, and to individuals for the purpose of obtaining project proposals. Usually, a variety of proposals for work within the general program areas described in the brochures are submitted to the Office of Education in response to this solicitation. The

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Office of Education evaluates the proposals and selects for funding those proposals considered to have the most merit. For example, 100 proposals might be received in reply to a brochure on a general program area such as educational research but perhaps only 50 would be selected. It should be noted that, although the 100 proposals would fall within the same general program area, they could all be for different projects.

Office of Education officials have advised us that the brochure system provides the Office of Education with ideas for educational projects. One official stated that "many ideas for improvement and innovation in education are spawned in settings outside the OE [Office of Education] and are not susceptible to precise predetermination nor packaging by OE educational staff."

Officials of the Office of Education have informed us that they believe that most of the proposals received are in response to brochures or public announcements. Accordingly, even though the Office of Education does not always know whether an organization that submits a proposal has done so in response to a brochure, it assumes that all unsolicited proposals are submitted on this basis and classifies all resultant contracts as competitive awards.

It is the Office of Education's position that these awards are made on a competitive basis because brochures are sent to many organizations and individuals and there are some elements of competition in such an award.

The Office of the Assistant Secretary for Administration has taken the position that contracts awarded under the brochure system are noncompetitive because the Office of Education does not prepare an Invitation for Bid or a Request for Proposal describing a specific project. In other words, unless the organizations involved can compete for an identical project, the Office of the Assistant Secretary for Administration does not consider the award to be competitive.

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The Federal Procurement Regulations, which govern procurement in civilian agencies, require the use of formally advertised competitive procurement for all Government purchases, with certain exceptions. However, the Federal Procurement Regulations make clear that adequate competition requires that more than one vendor be solicited.

The Department of Health, Education, and Welfare classifies formally advertised procurement as competitive. It also includes, as competitive procurement, situations in which Requests for Proposal are sent to, and proposals are received from, more than one prospective contractor and in which the best proposal is selected for the award. The Department classifies this method of award as competitive negotiation. The Department, however, does not extend its definition of competition to include contracts awarded under the brochure system because under this system not all potential contractors are proposing prices for comparable jobs; that is, the work to be done under each of the proposals is different. This accounts for the difference you noted in the information provided by the Office of Education and that provided by the Department.

The Federal Procurement Regulations provide that all purchases and contracts, whether by advertising or negotiation, be made on a competitive basis to the maximum practicable extent and that bids or proposals be solicited from enough qualified sources as are deemed necessary to ensure such full and free competition as is consistent with the procurement of the types of supplies and services necessary to meet the requirements of the agency concerned. Competitive bidding contemplates an equal opportunity for all prospective contractors to compete on an equal basis and to have their bids or proposals considered in competition with all other bids and proposals upon the same basis. OE's brochure system of procurement does not appear to fit the designation competitive as that term is normally used in the regulations, since the educational program areas are described in general terms and the variety of proposals received are so dissimilar that they are incapable of being evaluated on an equal basis. However, we recognize that, because of the unique nature of the end product

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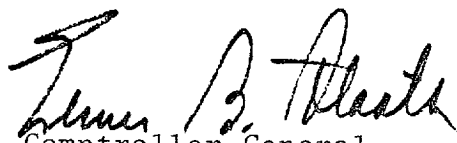
involved, the brochure system of procurement may be necessary to meet the needs of the agency.

Since the basis used by the Office of Education to classify its contracts as competitive or noncompetitive differs from bases used by other Federal agencies, it seems desirable that any data that the Office of Education publishes on contract awards should clearly explain the basis for classification so that the classification would not be subject to misinterpretation.

According to a memorandum dated November 10, 1970, from the Department of Health, Education, and Welfare to the Commissioner of Education, a complete study of the Office of Education procurement program is to be started early in 1971 under the direction of the Assistant Secretary for Administration. We understand that this study will give consideration to the brochure system.

If we can be of any further assistance, please let us know.

Sincerely yours,

  
Comptroller General  
of the United States

Enclosures - 3

The Honorable Edith Green, Chairman  
Special Subcommittee on Education  
Committee on Education and Labor  
House of Representatives

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